IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITON NO. 958 OF 2006

Francis Joseph Thanicatt and anr. ..Petitioners

Vs.

Allwyn Mascarenhas and anr. ..Respondents

Mrs. Anita A. Agrawal for petitioners.
Mr. A.P.D.Fernandes for respondent no.1.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : September 14, 2007.

Pronounced on : September 19, 2007.

P.C.:

1. Heard Mrs. Agrawal the learned counsel for the petitioners who are impleaded as accused nos.1 and 2 in C.C. No.340/S/2000 (now registered as C.C. No.46/S/2002 filed by the present respondent no.1 under Section 138 of the Negotiable Instruments Act, 1881 before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra. Process was issued by the learned Addl. Chief Metropolitan Magistrate on 10/8/2000 against both the accused, but it was not served. On 29/3/2001 an application was submitted by

the complainant for correction of the name of accused no.1. It was contended that the name of the accused no.1 was originally written in the complaint memo as "Mr.Thomas Thanicatt" and it was sought to be corrected as "Mr. Francis Joseph Thanicatt". The complainant stated that the said error had occurred due to typographical mistake and solely on account of inadvertence and oversight. The application was allowed by the learned Addl. Chief Metropolitan Magistrate on 29/3/2001 itself and thereafter corrected process was issued in the name of accused no.1. The petitioners had approached this court in Criminal Writ Petition No. 494 of 2005 praying for quashing of the process issued by the learned Addl. Chief Metropolitan Magistrate and by the order dated 26/11/2005 this court disposed the petition with liberty to the petitioners to approach to the Sessions Court with a Revision Application under Section 397 of Cr.P.C. The petitioners, therefore, preferred Criminal Revision Application No.629 of 2005 before the Sessions Court at Mumbai and the same has been dismissed by the learned Additional Sessions Judge on 1/4/2006. Hence, this petition.

2. Mrs. Agrawal the learned counsel for the petitioners, at the first instance, relied upon a decision of this court (Single Bench) in the case of Behram S. Doctor vs. State of Maharashtra and anr. [2003 (4) Mh.L.J. 505] and submitted that there is no provision in Cr.P.C. by which a complainant can make a prayer for permitting him to amend the complaint by changing the name of the accused and substituting one accused by another and alleging that the substituted accused had committed the alleged offence. In the instant case, there is no substitution of one accused by another and it was correction of the name of accused no.1 which was erroneously typed due to inadvertence/oversight and, therefore, the learned Addl. Chief Metropolitan Magistrate was not prevented from allowing the correction to be made in the name of accused no.1. There is no provision in Cr.P.C. which bars the learned Addl. Chief Metropolitan Magistrate from allowing such a correction in the name of the accused, in as much as in the instant case the first name of the accused was erroneously typed as "Thomas" instead of "Francis". The learned counsel for the respondent no.1, therefore, rightly relied upon a

decision of this court (Single Bench) in the case of Maan Agro Centre vs. E.I.D. Parry (India) Limited and anr. [2005 (1) Bom. C.R. (Cri.) 699].

3. The second ground raised by Mrs. Agrawal in challenging the order of issuance of process is that there was no process issued against the accused no.2, though the subject flat was owned by her and the accused no.1 who is her husband was acting all along as her Constituted Attorney for the sale of the said flat. However, the record shows that a separate process was also issued in the name of accused no.2 and in any case even if the process is issued only against the accused no.1, there is no dispute that the dishonoured cheque was signed by accused no.1 as the Constituted Attorney of accused no.2 and the cheque was issued from her account. Mrs. Agrawal also pointed out that no notice was issued to accused no.2 and thus there was no cause of action to file the complaint as all the conditions set out in Section 138 of the N.I. Act, 1881 were not met when the complaint was filed. She pointed out that cause of action arises after the notice is issued to the drawer and

within 15 days from receipt of such a notice, the drawer of the cheque fails to pay the cheque amount. In the instant case, admittedly, notice was issued to accused no.1 in his capacity as the Constituted Attorney of accused no.2 and it is clear from the averments made in the complaint that it was accused no.1 who was all along negotiating with the complainant for the sale of flat owned by accused no.2. Therefore, the reliance of the learned counsel on the decision in the case of Shakti Travel and Tours vs. State of Bihar and anr. [(2002) 9 SCC 415] is misplaced.

4. The Revision Court, while dismissing the revision application, has considered all the pleas raised by the petitioners and dismissed the revision application. The reasoning set out by the learned Addl. Sessions Judge in the impugned order cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution and in any case the complainant has made out a triable case against both the accused and consequently this is not a fit case to invoke the inherent powers of this

court under Section 482 of Cr.P.C. for quashing of the complaint.

5. Hence, the petition is rejected summarily. Trial is expedited.

(B.H. Marlapalle,J.)

. Mrs. Agrawal the learned counsel made an oral application for continuing the ad-interim order granted earlier. Oral application is rejected.

(B.H. Marlapalle,J.)